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| APPLICATION NUMBER 09/094,691 | FILING DATE 05/26/98 | FIRST NAMED APPLICANT BURKH | ATTY. DOCKET NO. |
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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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4

DATE MAILED:

12/09/98

PN21/1209
NATIONAL INSTITUTES OF HEALTH
OFFICE OF TECHNOLOGY TRANSFER
6011 EXECUTIVE BOULEVARD SUITE 325
BOX 13
ROCKVILLE MD 20852

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 8/28/98

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire - 1 - month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-20 + 32-59 is/are pending in the application.
Of the above, claim(s) 1, 3, 11-16, 18-20, 31, 33-37, 39-47 + 49-59 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claim(s) 2, 4-10, 17, 32, 38, 47 + 48 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

Art Unit: 1643

DETAILED ACTION

1. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit **1643**.

Election/Restriction

2. Applicant's election with traverse of Group II claims 2, 4-10, 17, 32, 38, 47 and 48, is acknowledged. Upon further consideration of the elected claims, a plurality of species was noted.

3. This application contains claims directed to the following patentably distinct species of the claimed invention: Polypeptides, vectors encoding the polypeptides and methods of making the polypeptides wherein the polypeptides are selected from those encoded by SEQ ID NO: 52-102 or 155-206. Applicant is requested to elect one (1) polypeptide represented by two (2) SEQ ID NOs: (nucleic acid sequence and encoded polypeptide) for prosecution in this application. Each of these polypeptides is derived from a differing isolate of HCV, and the knowledge of the sequence of one polypeptide would not render the sequence of another isolate obvious.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 2 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon,

Art Unit: 1643

including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service.

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Please limit the use of this dedicated Fax number to responses to Written Restrictions.

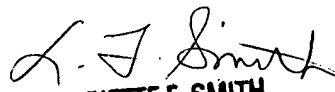
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mary K Zeman** whose telephone number is (703) 305-7133. The examiner can be reached between the hours of 7:30 am and 5:00 pm Monday through Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

The fax number for this Art Unit is (703) 305-7401.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

mkz
December 8, 1998


LYNETTE F. SMITH
PRIMARY EXAMINER
GROUP 1800



RESTRICTION ELECTION FACSIMILE TRANSMISSION

DATE:

FROM/ATTORNEY:

FIRM:

PAGES, INCLUDING COVERSHEET:

PHONE NUMBER:

TO EXAMINER: Mary K Zeman

ART UNIT: 1643

SERIAL NUMBER: 09/084,691

FAX/TELECOPIER NUMBER: (703) 305-3704

**PLEASE NOTE: THIS FACSIMILE NUMBER IS TO BE USED ONLY
FOR RESPONSES TO RESTRICTIONS.**

COMMENTS: _____

IF YOU HAVE NOT RECEIVED ALL THE PAGES OF THIS TRANSMISSION, PLEASE CONTACT THE ATTORNEY AT THE TELEPHONE NUMBER LISTED ABOVE.

IN COMPLIANCE WITH 1096 OG 30, THE FILING DATE ACCORDED EACH OFFICIAL FAX TRANSMISSION WILL BE DETERMINED BY THE FAX MACHINE DATE STAMP FOUND ON THE LAST PAGE OF THE TRANSMISSION, UNLESS THAT DATE IS A SATURDAY, SUNDAY, OR FEDERAL HOLIDAY WITHIN THE DISTRICT OF COLUMBIA, IN WHICH CASE THE OFFICIAL DATE OF RECEIPT WILL BE THE NEXT BUSINESS DAY.

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